IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5413 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASIKBHAI RAMJIBHAI PARMAR (THAKORE)

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5413 of 2004

MR AM PAREKH for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MR RC KODEKAR, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/09/2004

ORAL JUDGEMENT

The detenu has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the

order dated 23-2-2004 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. Replies filed by the respondent Nos.1 and 2 are ordered to be taken on record. According to learned advocate for the petitioner, a representation dated 21-4-2004 has been sent to the authority which has been received by the authority on 26-4-2004 and said representation was sent to the State on the same day. It is further submitted that though said representation has been rejected on 28-4-2004, it was communicated to the detenu on 8-5-2004 vide letter dated 28-4-2004 and, therefore, there is a delay in considering the representation and communicating the same to detenu. He has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the representation dated 23-4-2004 sent to the State Government was rejected by the State Government on

28-4-2004 and it was communicated vide letter dated 28-4-2004 but same was received by the detenu on 8-5-2004 i.e. after 11 days. However, no satisfactory explanation has been putforward by the respondents in the affidavits for the delay caused in communicating the decision to the detenu. Since no satisfactory explanation has been putforth by the concerned authorities for not communicating the decision of rejection of his representation till 8-5-2004, in view of the aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 23-2-2004 passed against the detenu Rasikbhai Ramjibhai Parmar (Thakore) is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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